Supreme Court, U. S.
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No. 96-85

In The

Supreme Court of the United States

October Term, 1995

KAREN MCCRACKEN,

Petitioner,

v.

COSHOCTON COUNTY AND DAVID CORBETT

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS COSHOCTON COUNTY AND DAVID CORBETT

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13 pp

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Opinions Below 1

Statement of the Case 1

Summary of Argument 5

Reasons for Denying the Petition 5

I. THE COURT OF APPEALS PROPERLY AFFIRMED SUMMARY JUDGMENT ON BEHALF OF RESPONDENTS 5

Conclusion 9

TABLE OF AUTHORITIES

Page

CASES:

Corby v. Conboy, 457 F. 2d 251 (2d Cir. 1972) 6

Estelle v. Gamble, 429 U.S. 96 (1976) 5

Fitzke v. Shappel, 468 F. 2d 1072 (6th Cir. 1972) 6, 7

Jones v. Lockhart, 484 F. 2d 1192 (8th Cir. 1973) 6

Massey v. Hutto, 545 F. 2d 45 (8th Cir. 1976).....7, 8

McCracken v. Jones, 562 F. 2d 22 (10th Cir. 1977)..... 7

McKinney v. People of State of Calif., 427 F. 2d 1660 (9th Cir. 1970), *cert. denied* 400 U.S. 831 (1970) 7

Pinon v. Wisconsin, 368 F. Supp. 608 (E.D. Wis. 1973)..... 6

United States v. Ragen, 323 F. 2d 410 (7th Cir. 1963) 7

Westlake v. Lucas, 537 F. 2d 857 (6th Cir. 1976) 6, 7

STATUTES:

42 U.S.C. § 1983.....1, 7

BRIEF IN OPPOSITION OF RESPONDENTS COSHOCTON COUNTY AND DAVID CORBETT

Respondents Coshocton County and David Corbett respectfully request that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished and is included in the appendix to petitioner's Petition at A-1.The opinion and order of the United States District Court for the Southern District of Ohio, Eastern Division is unpublished and is included in the appendix to petitioners' Petition at page A-4.

STATEMENT OF THE CASE

Petitioner commenced this action on September 30, 1994 under 42 U.S.C. §1983 claiming that respondents violated her constitutional rights by delaying medical treatment during her five-day incarceration at the Coshocton County Jail in February, 1993. (R.1: Complaint).

On June 7, 1995 respondents filed a Motion for Summary Judgment (R.6: Motion). Plaintiff filed her Memorandum Contra on June 29, 1995 (R.7: Memorandum Contra), to which respondents filed their Reply on July 31, 1995 (R.10: Reply). The District Court rendered its

Opinion and Order granting respondents' Motion for Summary Judgment on August 21, 1995 (R.21: Memorandum, Opinion and Order; Petition at A-4) and timely Notice of Appeal was filed on September 18, 1995 (R.13: Notice of Appeal).

On April 17, 1996 the United States Court of Appeals for the Sixth Circuit issued its decision affirming the District Court's Order granting respondents' Motion for Summary Judgment (Petition at A-1).

In discussing the facts of this case in her Statement of the Case (Petition at 3-5) petitioner chooses to ignore much of the evidence presented to the District Court. The facts of this case were succinctly set forth by the District Court as follows:

> The majority of the facts of this case are not in dispute. Plaintiff began her 5-day jail sentence on February 8, 1993. At this time, her condition had begun to flare up. As a result of her condition, it became necessary for plaintiff to be taken to the emergency room of the Coshocton County Memorial Hospital on February 10, 1993. She was diagnosed as having a urinary tract infection which plaintiff claims is a symptom of her disease. She requested emergency room staff to contact her personal physician, but they refused. When they still refused after repeated requests, plaintiff asked the sheriff's deputy to be returned to the jail.
>
> Upon her return to jail, plaintiff called her mother who, in turn, called plaintiff's personal physician, a Dr. Carver. According to plaintiff, Dr. Carver arranged for her to go to Bethesda Memorial Hospital ("Bethesda") in Zanesville,

Ohio for intravenous ("IV") fluid treatments. Plaintiff claims that jail officials would permit her to go to Bethesda only after she testified before the grand jury on February 12, 1993. By the time she testified, plaintiff was very weak, dehydrated, and needed help standing and walking. After she testified, she went to Bethesda which denied her admission. She then returned to the jail and remained there one more night to finish out her sentence.

Plaintiff claims that defendants delayed her from receiving medical treatment in the form of the IV treatments until after she testified in front of the grand jury despite their knowledge that she was severely ill. Defendants have disputed that they intentionally delayed plaintiff's medical treatment or denied her from receiving treatment until after she testified. Clearly, defendants were not deliberately indifferent to plaintiff's medical needs prior to her visit to Bethesda on February 12, 1993. Defendants allowed her to go to the emergency room and receive treatment there. Defs.' Mot. Summ. J., Exs. A-2 and A-3. Defendants also supplied plaintiff with prescribed medication and Tylenol. Defs.' Mot. Summ. J., Ex A-2. The only question is whether defendants delayed further medical treatment for plaintiff in deliberate indifference to her health and safety.

In response to plaintiff's allegation about a delay in treatment, defendants submit the affidavit of Sheriff David Corbett. Defendant Corbett states that he investigated into plaintiff's allegation and found that neither the court and jail records, the prosecuting attorney, the municipal court judge, nor the jail matron on duty

reflected or issued an order that plaintiff be denied medical treatment until after she testified. David Corbett's July 27, 1995 Affidavit at ¶3. He also did not issue an order or take any other action to prevent plaintiff's release to the hospital until after she testified. Corbett Aff. at ¶5. He also states that he never took any action to deny or delay medical treatment to plaintiff and is not aware of anyone else who did so. *Id.* at ¶6.

Defendant Corbett also states that he was never contacted by plaintiff's physician, Dr. Carver, or anyone else regarding plaintiff's need for IV treatment. *Id.* at ¶7. As defendants point out, plaintiff does not state in her affidavit that Dr. Carver notified them of plaintiff's need to go to Bethesda to receive the IV treatments. Without knowledge of this need, defendants could not be deliberately indifferent to it.

Defendants also contend that plaintiff's condition was not as bleak as she would make out. Defendants point out that plaintiff's physical examination at Bethesda revealed "a healthy appearing middle-aged female in no evident physical distress." Defs.' Mot. Summ. J., Ex. C. Bethesda also refused to admit plaintiff because "there was nothing that we could do for her in the hospital that could not be done as an outpatient and therefore there would be no justification for admitting her." *Id.*

(R. 11: Memorandum, Opinion and Order at 5-7; Petition at A-8-10.)

SUMMARY OF ARGUMENT

While incarcerated in the Coshocton County Jail, respondents provided medical treatment to petitioner including examination, diagnosis and treatment at a hospital and all prescribed medications. There is no evidence in the record or even in petitioner's own Affidavit (R.7: Memorandum Contra, Exhibit B) that respondents were ever advised of any additional or alternate necessary medical treatment. Respondents were not indifferent to petitioner's serious medical needs and the District Court properly granted summary judgment for respondents.

REASONS FOR DENYING THE PETITION

I. THE COURT OF APPEALS PROPERLY AFFIRMED SUMMARY JUDGMENT ON BEHALF OF RESPONDENTS

In *Estelle v. Gamble*, 429 U.S. 97 (1976), this Court held that the deliberate indifference by prison personnel to an inmate's serious illness or injury constitutes cruel and unusual punishment so as to violate the Eighth Amendment to the United States Constitution. At the same time, however, this Court recognized that not every claim by a prisoner of inadequate medical treatment states a constitutional violation, and that negligent treatment of a prisoner's medical condition by prison personnel fails to state a cognizable claim for relief under federal law. 429 U.S. at 105-106.

The Sixth Circuit Court of Appeals has also held that an inmate's allegation of negligent treatment of a medical condition fails to state a cognizable federal claim. In

Westlake v. Lucas, 537 F. 2d 857 (6th Cir. 1976), the court, after recognizing that fundamental fairness and due process mandate that medical care be provided to one who is incarcerated and may be suffering from serious injury, observed that:

> This is not to say that every request for medical attention must be heeded nor that courts are to engage in the process of second-guessing in every case the adequacy of medical care that the state provides.

Id. at 860, quoting *Fitzke v. Shappell*, 468 F. 2d 1072, 1076 (6th Cir. 1972).

In *Westlake*, the Sixth Circuit drew an important distinction between allegations of "complete denial of medical care," which state a constitutional violation, and the allegations of "inadequate medical treatment," which do not.

> We distinguish between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment. *See Fitzke v. Shappell, supra* [468 F. 2d 1072 (6th Cir. 1972)] at 1076, n.4. *See also Jones v. Lockhart, supra* [484 F. 2d 1192 (8th Cir. 1973)] at 1194; *Corby v. Conboy, supra* [457 F. 2d 251 (2d Cir. 1972)] at 254. Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgment and to constitutionalize claims which sound in state tort law. *See*, e.g. *Pinon v.*

Wisconsin, 368 F. Supp. 608 (E.D. Wis. 1973). *But cf. Fitzke v. Shappell, supra* at 1076-77 n.7.

537 F. 2d 860 n.5.

In her Complaint (R.1: Complaint at ¶¶9 and 11), petitioner alleged a complete denial of medical care. However, from the documents attached to respondent's Motion for Summary Judgment (R.6: Motion, exhibits), some of which were supplied by the petitioner herself, it is beyond dispute that petitioner did receive medical treatment. Petitioner's only possible complaint in this regard amounts to a challenge to the adequacy of that treatment. Petitioner, at best, was, therefore, asserting a medical negligence action which cannot be the basis for a federal civil rights action.

The law is clear that a mere difference in opinion between prison officials and a prisoner over the course of the prisoner's medical treatment does not give rise to a constitutional right or sustain a claim for relief under 42 U.S.C. §1983. *McCracken v. Jones*, 562 F. 2d 22 (10th Cir. 1977); *Massey v. Hutto*, 545 F. 2d 45 (8th Cir. 1976); *McKinney v. People of State of Calif.*, 427 F. 2d 1660 (9th Cir. 1970) *cert. denied*, 400 U.S. 831 (1970); *United States v. Ragen*, 323 F. 2d 410 (7th Cir. 1963).

> State prison officials must of necessity be vested with a wide degree of discretion in determining the nature and character of medical treatment to be afforded state prisoners. It is not the function of federal courts to interfere with the conduct of state officials in carrying out such duties under state law.

United States v. Ragen, 323 F. 2d at 412. *See also, Westlake v. Lucas*, 537 F. 2d 857 (6th Cir. 1976).

Given this wide degree of discretion vested in state prison officials, "[i]t is established that claims of inadequate medical treatment which reflect mere disagreement with prison authorities over proper medical treatment do not state a claim of constitutional magnitude." *Massey v. Hutto*, 545 F. 2d at 46.

For the first time in her Memorandum Contra (R. 7: Memorandum Contra), while admitting that she did receive medical treatment while incarcerated, petitioner argues that additional medical treatment was delayed. Indeed, in her Petition before this Court, petitioner asserts, at p. 4, that she "was not allowed to go and receive the treatment until after [she] testified in front of the grand jury on February 12." But nowhere – not even in petitioner's own Affidavit – (R.7: Memorandum Contra, exhibit B) is there even an allegation that petitioner's physician, Dr. Craver, or any other medical professional ever advised respondents of this alleged need for IV treatment. In fact, in her own Affidavit (R.7: Memorandum Contra, Exhibit B), petitioner does not even allege that *she* told any jail personnel that she needed this treatment. What petitioner ignores is that the Affidavit of Respondent Sheriff Corbett affirmatively states:

> 5. I did not issue an order or take any other action to prevent Plaintiff's release to the hospital until after she testified before the grand jury nor am I aware of anyone else issuing such an order or taking such action.
>
> 6. I have never taken any action whatsoever to deny or delay medical treatment to Plaintiff nor am I aware of anyone else ever doing so.

> 7. I was never contacted by Plaintiff's physician, Dr. Carver, concerning her alleged need for IV treatment, nor was I ever aware, from any other source, of any such need.
>
> (R.10: Reply, Exhibit A)

These are not inadmissible statements of belief but, rather, admissible, affirmative statements of what the Sheriff did or did not do and did or did not know.

While incarcerated, petitioner was taken to the hospital for examination and treatment where she was diagnosed with a urinary tract infection. Even if petitioner was dissatisfied with this treatment, and even if the diagnosis was ultimately determined to be erroneous, this does not constitute deliberate indifference to serious medical needs. Further, respondents certainly cannot be held liable for delaying treatment that they had no knowledge was necessary. To the contrary, respondents sought out medical care for petitioner and provided all care that was prescribed or recommended.

CONCLUSION

Petitioner has failed to show any conflict between the decision of the Court of Appeals for the Sixth Circuit and prior decisions of this Court or of any other federal court. Petitioner has failed to show any other basis for this Court to hear this case. The decision of the Court of Appeals for the Sixth Circuit is consistent with applicable law and does not warrant review on any grounds.

Respondents respectfully request that petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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